IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R.No. 5850 of 2006
Date of decision : 9.11.2006.

M/s Rachitech Engineering Pvt. Ltd.

.....Petitioner.

Versus

M/s Kundan Steels Pvt. Ltd.

.....Respondent.

CORAM : HON'BLE MR. JUSTICE VINOD K. SHARMA

Present : Mr.P.K. Mutneja,Advocate
for the petitioner.

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VINOD K. SHARMA,J.(ORAL)

The present revision petition has been filed against the order dated 12.10.2006 passed by the learned appellate authority declining the request of the petitioner for assessment of provisional rent.

The learned Rent Controller on the question of arrears of rent was pleased to hold as under :-

> "Now, the next question arises whether the then Rent Controller ought to have made provisional assessment. In this regard, it may be observed that when the tenant has denied the relationship of landlord and tenant, the Rent Controller is not required to draw a provisional order of assessment and to give an opportunity to make the payment of arrears of rent. Reliance in this regard, may be placed on the observations made in Devender Puri Vs. B.N. Rampal PLR 2004(3) 591. In the instant case, the

> respondent has not tendered the rent, rather it has taken a stand that it has already paid the sale consideration to the bank on account of money owned by the petitioner to the bank. Even RW1 in his cross examination has admitted that after January, 1995, they have not made the payment of rent. Hence, the respondent must suffer the ejectment for non payment as he could have tendered the rent under protest."

After the order of ejectment was passed the petitioner earlier filed an application claiming that the proceedings before the appellate authority be adjourned sine die. After the petitioner failed to get stay of proceedings and also failed in a revision filed by him,then application was moved before the appellate authority for assessment of provisional rent. The learned appellate authority has rejected the said application by way of impugned order by holding that when the relationship of landlord and tenant is denied then there is no necessity for the Rent Controller to pass an order fixing the provisional rent. The learned counsel for the petitioner vehemently argued that the said authority could not be applicable to the case of the petitioner in view of the special circumstances in this case. The contention of the learned counsel for the petitioner is that there was an agreement to sell in his favour under which the landlord has failed to perform his part of contract i.e. to redeem the property and pay other charges which he had to pay. However, it is not disputed that after the agreement to sell the petitioner has executed a rent agreement with the respondent in spite of execution of said rent agreement when the petition was filed, relationship of landlord and tenant has been denied by him. Even

before the Rent Controller he took no steps to move any such application for determination of provisional rent. The learned counsel for the petitioner contends that he paid certain amount even to HUDA. Be that as it may, this contention rather goes contrary to the stand taken by the petitioner for fixing of provisional rent. Since the relationship of landlord and tenant is denied then there is no necessity of assessment of provisional rent.

There is no error or illegality in the impugned order which may call for interference.

Dismissed.

9.11.2006 **(VINOD K. SHARMA)**
'sp' **JUDGE**